

Return-to-Work Assistance

The fundamental goals of the workers' compensation system include returning injured workers to their jobs quickly and enabling them to earn close to their pre-injury wages. Oregon statute does this in three ways. First is the structure of disability benefits. Temporary partial disability as an alternative to temporary total disability, and the possibility of payment of work disability benefits for permanent impairment, act as incentives for employers and insurers to get injured workers back to work. Second, statute prohibits employment discrimination and provides re-employment and reinstatement rights to injured workers. The Bureau of Labor and Industries enforces those laws, as well as other civil rights laws. Third, the workers' compensation system assists injured workers with three employment programs.

The Employer-at-Injury and the Preferred Worker programs provide incentives to employers who choose to re-employ injured workers. The Employer-at-Injury Program (EAIP) focuses on workers who have medical releases to temporary, restricted work. The Preferred Worker Program (PWP) is for workers who have known permanent work restrictions. The essence of both programs is early diagnosis and accommodation of medical restrictions. The insurer plays an active role in both programs.

Costs of EAIP and PWP benefits and insurer administration are paid from the Re-employment Assistance Program within the Workers' Benefit Fund. In 2011, benefit costs paid came to \$18.64 million for the Employer-at-Injury Program and \$6.10 million for the Preferred Worker Program. Costs for EAIP benefits first exceeded PWP in 2000, and since then, EAIP's share of Re-employment Assistance Programs benefits paid has been increasing rapidly. Also, the PWP benefit costs do not include placement services that were enabled by SB 119 (2005). Revenue for the Workers' Benefit Fund is mostly assessments paid equally by workers and their employers on hours worked.

The vocational assistance program is available for only the most severe disabilities. Insurers and rehabilitation professionals provide formal plans and needed purchases, usually for retraining, to return disabled workers to suitable jobs. For injuries after 1985, vocational assistance is funded through employers' insurance premiums. For more information about the costs of vocational assistance since 1995, see the indemnity chapter of this report.

Figure 8. Percent of accepted disabling claims with use of return-to-work programs by fourth year post-injury, 2006-2012

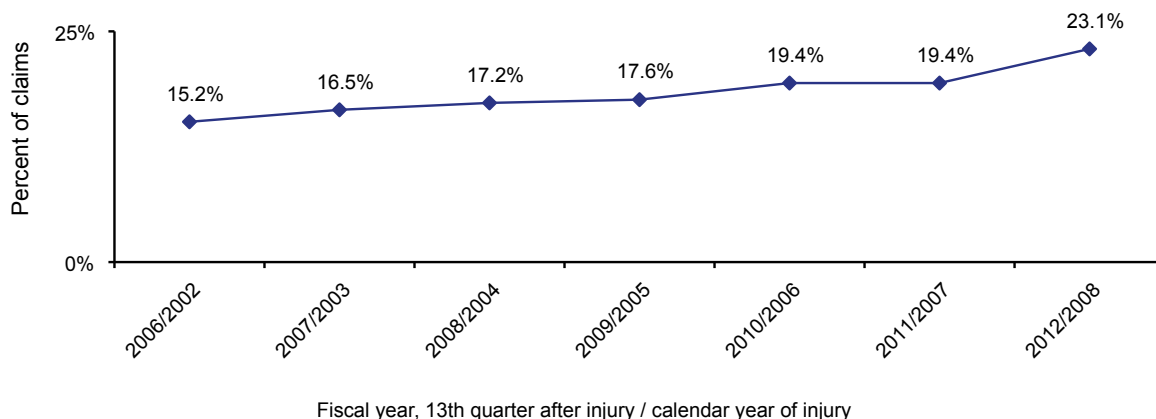
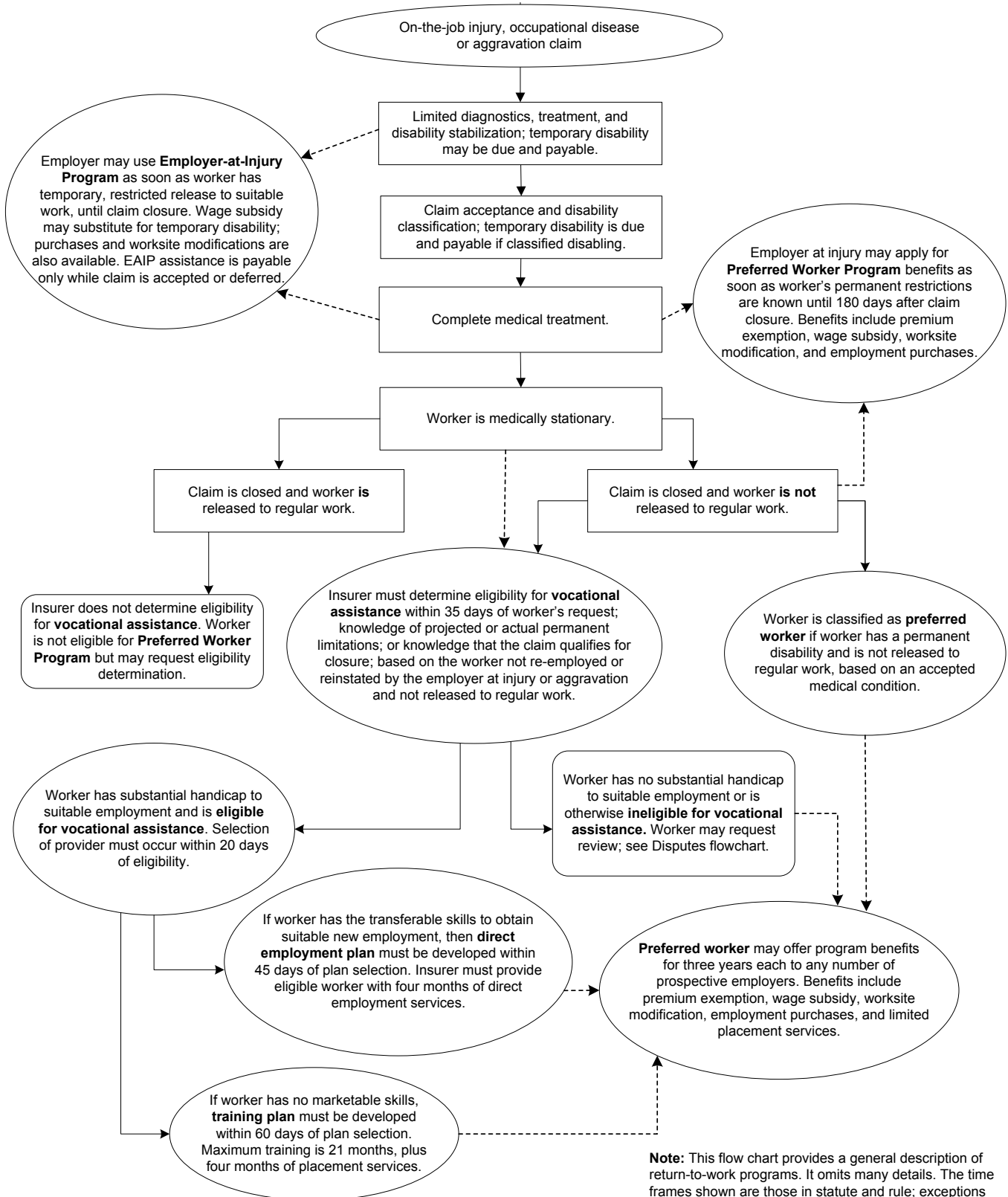


Figure 9. Return-to-work flowchart



The - - - - - indicates potential path of process.

Note: This flow chart provides a general description of return-to-work programs. It omits many details. The time frames shown are those in statute and rule; exceptions to these time frames are not shown. Flow charts in the claims processing chapter and the disputes chapter provide additional information.

Measuring the effectiveness of return-to-work programs

The International Association of Industrial Accident Boards and Commissions and the Workers' Compensation Research Institute have recognized department's performance measures for innovative use of employment and wage data. The measures are percentage point differences in employment and wage-recovery rates between workers with accepted disabling claims who used return-to-work programs and similar workers who did not. Data come from the Oregon Employment Department: Wages reported in the 13th quarter after the disabling injury or exposure compared to wages reported in the injury quarter and the quarter before injury.

In 2012, for workers with accepted disabling claims for 2008 injuries and illnesses, the employment rate advantage for use of return-to-work programs was 11 percentage points. Since 1997, through periods of both high and low unemployment, the employment rate for program users has been 9 percentage points to 13 percentage points higher compared to workers with no use of return-to-work programs. The wage-recovery advantage was 12 percentage points. On average, program users recovered 100 percent of their pre-injury wages, adjusted for statewide trends in employment and wages.

Results of a recent study featuring a more in-depth use of performance measurement data show that preferred workers are more likely to use their benefits if they had a transitional work placement under the Employer-at-Injury Program, and that workers who complete their vocational assistance plans have better employment and wage-recovery outcomes if they use preferred worker benefits.

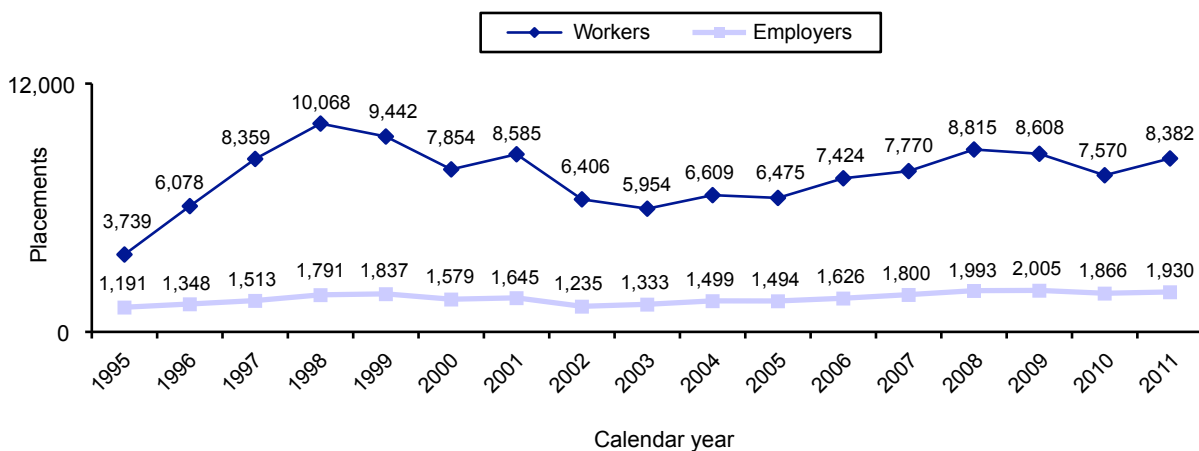
Return-to-work program use

By the first quarter of 2012, more than 23 percent of accepted disabling claims for injuries and illnesses during 2008 had use of return-work-programs: an Employer-at-Injury Program placement, Preferred Worker Program benefits, completion of a vocational assistance plan, or any combination thereof. This is the highest rate of program use for the seven years of measurement.

The Employer-at-Injury Program

The Employer-at-Injury Program (EAIP), created in 1993, is for Oregon employers and their injured workers who have temporary medical releases for return to light-duty, transitional jobs. Insurers arrange job placements for which they receive a flat fee of \$120 each. Assistance to employers generally consists of a 50 percent wage subsidy for a period of up to three

Figure 10. Employer-at-Injury Program, placements approved, 1995-2011



months. Worksite modifications and early return-to-work purchases are also available and have been made easier to use.

A statutory change in 1995 permitted extension of the program to include workers with claims classified as nondisabling even though the workers have medical restrictions on the kinds of work they can perform. By getting workers back to a job shortly after injury, the EAIP has prevented many accepted nondisabling claims from becoming disabling claims, because no temporary disability benefits are due and payable. An administrative law change in December 2007 extends benefits to workers with claims where compensability ultimately was denied, but temporary disability benefits were due and payable while compensability was investigated.

Insurers may reduce or discontinue temporary disability benefits if a worker refuses modified work, including an EAIP placement. Effective mid-2001, Senate Bill 485 gave injured workers the right to refuse modified work if the job requires a commute that is beyond the worker's physical ability, is more than 50 miles away, is not with the employer at injury or not at that employer's worksite, or is inconsistent with the employer's practices or a collective bargaining agreement.

In 2011, the department approved payment for 8,382 placements, up substantially from 7,570 placements the previous year. There were 1,930 employers with at least one worker placement approved for payment. This has dropped from the 2,005 in 2009, which was the highest figure on record. Statutory and administrative law changes have succeeded in improving access and

participation. However, as with other return-to-work program indicators, economic conditions have an effect on these measures, too. For example, the declining number of claims appears to be resulting in declining numbers of worker placements.

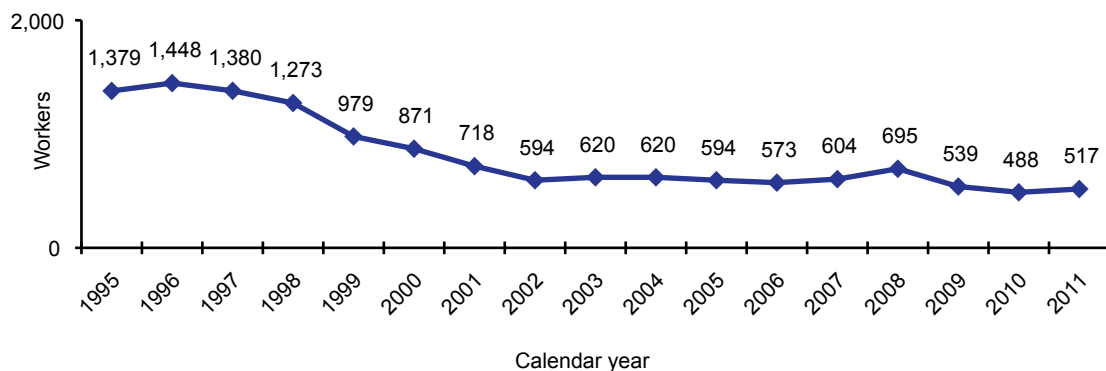
Measured at the 13th quarter after injury, employment and wage recovery rates have been consistently higher for workers with accepted disabling claims in which employers and insurers accessed Employer-at-Injury Program benefits. In both fiscal years 2010 and 2011, the employment and the wage recovery rates were 6 percent higher among workers in the Employer-at-Injury Program than among others. These statistics are based on a comparison of workers released to regular work, but with significant severity indicators for temporary and permanent impairment. Recent research showed that a wage recovery and employment advantage is sustained over a period of at least five years after injury.

Preferred Worker Program

The current version of the program is a result of SB 1197 (1990). Clarifications were added in 1995 through SB 369; notably, workers may not release these benefits through a claim disposition agreement. Senate Bill 119 (2005) expanded the program's options by enabling the payment for limited placement services contracted for on behalf of preferred workers.

The program's objective is to sustain disabled workers in modified employment as soon as permanent medical restrictions are known. A worker automatically receives a preferred worker identification card when the insurer

Figure 11. Preferred workers starting contracts, 1995-2011



reports that the worker has a work-related permanent disability preventing return to regular work. The card informs prospective employers that the worker may be eligible for the program's benefits. A worker may also request qualification as a preferred worker from the department. The department, not insurers, delivers benefits under the Preferred Worker Program.

An eligible employer who chooses to hire a preferred worker is exempt from workers' compensation premiums on the worker for three years. If the worker moves to another job, premium exemption is transferred to the new employer for an additional three years. The department reimburses insurers for all claim costs, including administrative expenses, for any claims preferred workers file during the premium-exemption period.

Three other benefits, payable by contract, are available for preferred workers and employers. Wage subsidies provide 50 percent reimbursement for six months; higher benefits are available for exceptional levels of disability. Worksite modifications alter worksites within Oregon to accommodate the workers' restrictions. Employment purchases provide uniforms, licenses, tools, worksite creation, and other benefits required to set up the preferred worker for employment. These benefits may be used more than once.

Administrative rule changes, effective July 2005, permit use of the program at the initiative of the employer at injury. A worker's entitlement to future program benefits is not affected if the worker accepts this option. Otherwise, use of the Preferred Worker Program is at the initiative of the injured worker and at the option of the prospective employer. Administrative rule changes effective December 2007 clarified that a preferred worker has no time limit on when to start using the program's benefits.

Benefit use among preferred workers is difficult to measure because some workers use benefits soon after becoming eligible while others wait for years. By one measure, the number of workers starting one or more contracts in a year, benefit use remained in the +/- 600 range from 2002 through 2007, climbed to nearly 700 in 2008, then dropped to a record low in 2010 with a small rebound in 2011.

Measured at the 13th quarter after injury, employment and wage recovery rates have been substantially

higher for preferred workers who used the program's benefits compared to preferred workers who did not. In 2011, the employment rate was 32 percentage points higher, and wage recovery was better by 28 percentage points. These statistics offer a relatively short-term perspective on the efficacy of the program. However, larger differences in wage recovery in favor of benefit users since 2005 may be due in part to changes in administrative rules and statute.

Vocational assistance

Insurers provide vocational assistance, usually through professional rehabilitation organizations, to overcome limitations that prevent injured workers' return to suitable work. In 1987, the Legislature passed HB 2900, which significantly restricted eligibility for vocational assistance by introducing a new test, substantial handicap. In general, this means that injured workers are only eligible for vocational assistance if a permanent disability prevents re-employment in any job paying at least 80 percent of the job-at-injury wage. In 1995, SB 369 further restricted eligibility for vocational assistance for aggravation claims. Because of these changes, as well as the declining number of claims, far fewer workers have been eligible for vocational assistance. The count for 2009 was 670, a record low. Effective January 2010, HB 2705 clarified that insurers no longer need to determine eligibility for workers released to regular work.

Benefits available under vocational assistance include professional rehabilitation services, such as plan development, counseling and guidance, and placement; purchases of goods and services, such as tuition; and temporary disability while the worker is actively engaged in training. Under current law, the typical eligible worker is entitled to a training plan followed by placement (direct employment) services.

Eligible workers are not required to use vocational assistance benefits. Since at least 1987, less than one-half of eligible workers have begun a plan following their eligibility determinations. From 1995 to 2000, less than one-third of workers completed their plans – defined as placement in a job or receipt of maximum services. Since then, the percentage of those completing their plans has dropped and currently is about 25 percent. Maximum service is 16 months of training (21 months exceptionally), plus four months of placement.

In 1990, the claim disposition agreement was legalized. With CDAs, workers release their rights to vocational assistance and other indemnity benefits in exchange for lump-sum settlements. Since 2002, around 50 percent of eligibilities have ended with a CDA. In general, these workers do not use Preferred Worker Program benefits, and they have low post-injury employment rates and wages.

The de-emphasis of vocational assistance has resulted in few workers returning to work because of the program, just 66 in 2011. However, workers who completed a vocational assistance plan have had better employment outcomes than eligible workers who did not complete their plans. Measured at 13 quarters after injury, employment rates have been 20 percentage points to 40 percentage points higher for workers who completed plans. Wage-recovery rates have shown similar advantages for workers who completed their plans. Because the completion of a vocational assistance plan typically occurs in the third year after injury, these statistics are a relatively short-term perspective on the efficacy of the program.